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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Citadel Broadcasting Company

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Serial Nos. 75/824,804; 75/824,921;
75/826,087; and 75/826,088

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David V. Radack of Eckert Seamans Cherin & Mellott, LLC for Citadel Broadcasting Company.

Brooke A. Beyer, Jr.,[1] Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

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Before Seeherman, Hohein and Holtzman, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

On October 18, 1999 Citadel Broadcasting Company filed four applications to register the marks CITADEL;[2] CITADEL COMMUNICATIONS, with the word COMMUNICATIONS disclaimed;[3] CITADEL COMMUNICATIONS CORPORATION, with the words

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[1] Verna Beth Ririe examined the applications until the appeals were filed.
[2] Application Serial No. 75/826,088.
[3] Application Serial No. 75/826,087.

COMMUNICATIONS CORPORATION disclaimed;[4] and CITADEL BROADCASTING COMPANY, with the words BROADCASTING COMPANY disclaimed,[5] all for radio broadcasting services. The applications were based on an asserted bona fide intention to the use marks in commerce. Registration of all four marks has been finally refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d), on the ground that applicant's marks so resemble the mark CITADEL COMMUNICATIONS, with the word COMMUNICATIONS disclaimed, previously registered for telecommunications services, namely long distance telephone services,[6] as to be likely, if used in connection with applicant's identified services, to cause confusion or mistake or to deceive.

Applicant appealed the refusals of registration, and filed appeal briefs in each application. The present Examining Attorney requested that the appeals be consolidated because they involved common questions of law and fact, and the Board granted the request. Accordingly, he filed a single appeal brief for all four applications. An oral hearing was not requested.

We reverse.

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[4] Application Serial No. 75/824,921.
[5] Application Serial No. 75/824,804.
[6] Registration No. 1,913,805, issued August 22, 1995. Section 8 affidavit accepted; Section 15 affidavit received.

Our determination of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in **In re E. I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

Applicant concedes that its marks are identical or substantially identical to the registered mark. However, applicant contends that confusion is not likely because the services are unrelated, and are sold to different consumers through different trade channels. In particular, applicant asserts that its customers are advertisers, and that the listening public will not be aware that the radio station they listen to is a Citadel station. Applicant also claims that applicant's and registrant's services are sold through different channels of trade, with applicant's services to advertisers being marketed through a sales staff, while registrant's services to the general public would be marketed through direct consumer advertising. Further, applicant argues that the advertisers who are the potential purchasers of its services are sophisticated and discriminating.

We are not persuaded by applicant's argument that the purchasers of its radio broadcasting services and the long distance telephone services identified in the cited

registration are different. Although applicant may get its income from advertisers, the general public is still a recipient of its radio broadcasting services, since the services are directed to the public at large. Even if applicant may not currently publicize its trademark to the public,[7] there is no inherent reason why it might not do so in the future.

Because applicant's radio broadcasting services are being rendered to the general public, its arguments regarding differences in the channels of trade and sophistication of its purchasers are not persuasive.

However, it is still the burden of the United States Patent and Trademark Office ("Office") to show that applicant's and the registrant's services are related, such that consumers will assume, when the same or substantially the same trademark is used for both, that they emanate from the same source. We turn, therefore, to an examination of the evidence submitted by the initial Examining Attorney to demonstrate the asserted relatedness of the services.

The record contains a large number of third-party registrations which list both radio broadcasting services

[7] Although the applications were all based on intent-to-use, applicant has stated that it has used its marks for radio broadcasting services since 1994.

and long distance telephone services. Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See **In re Albert Trostel & Sons Co.**, 29 USPQ2d 1783 (TTAB 1993). The problem with the third-party registration evidence of record in these appeals is that virtually all of the registrations are based on Section 44 of the Trademark Act, and do not reflect any use in commerce. Therefore, they have no probative value to show that the services are of a type which may emanate from a single source. Similarly, the third-party applications which are also of record are evidence only of the fact that they have been filed.

An examination of the third-party registrations reveals that there are only two third parties which have registered, based on use in commerce, long distance telephone services and radio broadcasting services. They are Metromedia Company, which owns five such registrations,[8] and Citizens Utilities Company, which owns one.[9]

[8] Registration Nos. 2,352,129; 2,139,344; 2,201,607; 2,201,202 and 2,234,476.
[9] Registration No. 2,205,067.

Also of record are excerpts and/or complete copies of articles taken from the NEXIS data base which purport to show that companies which offer long distance services also offer radio broadcasting services. Such articles may be used, not to prove the truth of the statements made therein, but to show public exposure to the information. (Accordingly, we have not considered the articles taken from wire service reports, as we have no way of knowing whether this information was ever published). Excerpts from the articles are set forth below:

> Since going on the air in October 1999, the news-talk radio station has sought to live up to its slogan –"Radio for Change"—by blending liberal and "progressive" programming....
> Owned by a San Francisco-based company, Working Assets, KWAB is trying to fill ... a void in a commercial radio market dominated by talk shows....
> Working Assets Inc. provides long-distance telephone, credit-card and online services to customers. Since its founding in 1985, the company says it has donated $20 million to nonprofits.
> The company ventured into broadcasting last year when it purchased KBVI-AM. Working Assets spent several months installing new equipment before it went on the air on October as KWAB.
> "Denver Rocky Mountain News," May 15, 2000

> IDB Communications provides customers with long distance telephone, radio, television and satellite communications services.

> “The Hollywood Reporter,” December 16, 1993
>
> ...YAMA provides the following major services: local and long-distance telephone calls, data transmission, radio broadcasting, cable and commercial television, and Internet access, and it plans to soon offer cellular mobile and paging services.
> “Company Fact Sheet,” September 12, 2000
>
> CHER offers standard telecommunication services including local and long-distance telephone, data transmission, wire radio broadcasting, cable and commercial television broadcasting, cellular communications, and Internet....
> “Company Fact Sheet,” April 18, 2000

We find that this NEXIS evidence is insufficient to show that the public is aware that companies which provide long distance telephone services also provide radio broadcasting services. It is not clear to us what the publication “Company Fact Sheet” is, or who its audience is. It would appear that this is a specialized trade publication which may be consulted by those requiring information on certain companies. It does not appear to be the type of publication that would be widely circulated among the general public. Similarly, “The Hollywood Reporter” is recognized as a trade paper, rather than a publication directed to the public at large. The only article provided by the Examining Attorney from a general

circulation paper is the article from the "Denver Rocky Mountain News."

It is presumed that the evidence submitted on behalf of the Office provides the best support from the sources from which it was taken for the Examining Attorney's refusal of registration. See **In re Federated Department Stores, Inc.**, 3 USPQ2d 1541 (TTAB 1987); **In re Homes & Land Publishing Corporation**, 24 USPQ2d 1717 (TTAB 1992).

Based on the evidence of record, we are not persuaded that the Office has met its burden of showing that applicant's and the registrant's services are related, and that the consuming public would regard them as emanating from the same source if they were offered under the same mark. Two third parties which have registered a single mark for both services, and a reference in one publication in general circulation that a company owns a radio station and offers long distance telephone services, is simply not sufficient to show that the public is aware of and would understand that such services come from the same source.

We emphasize that we have reached our determination that confusion is not likely based on the record before us in these appeals. On a different record, such as might be adduced in an opposition proceeding, we might well come to a different conclusion.

Decision: The refusals of registration are reversed.